



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Allstate Steel Corporation
P.O. Box 540
Candia, NH 03034

Re: 378 South Road, Candia, NH

ADMINISTRATIVE ORDER
No. WMD 04-02

February 13, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Allstate Steel Corporation pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Allstate Steel Corporation ("Allstate") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on September 12, 1995. Allstate has a mailing address of P.O. Box 540, Candia, NH 03034, and operates a business at 378 South Road, Candia, NH.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. The William and Joan Stewart Family Trust is the owner of land at 378 South Road, Candia, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 3779, Page 0310, and identified on the Candia Tax Map 410 as Lot 150 ("the Site").
4. On October 15, 2003, DES received a complaint alleging the mismanagement of used oil, fluorescent light bulbs, and paint wastes at the Site.

5. On November 19, 2003, DES personnel investigated the complaint by conducting an inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Allstate's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.
6. During the Inspection, DES personnel learned that used oil is generated at the Site from oil changes on vehicles and equipment.
7. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.
8. Allstate uses mineral spirits to clean its spray guns.
9. Mineral spirits have a flash point in the range of 105°F to 140°F depending on the grade.
10. Allstate utilized Insl-X Red Maintenance Shop Coat Primer ("Primer") to prime metal pieces.
11. The Primer has a flashpoint of 69°F.
12. Env-Wm 403.03(b)(1) specifies that any waste with a flash point of less than 140°F is a hazardous waste exhibiting the characteristic of Ignitability, with an assigned EPA hazardous waste number of D001.
13. The waste mineral spirits and the waste Primer are hazardous wastes as defined by Env-Wm 403.03(b)(1).
14. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."
15. Allstate is a generator of hazardous waste as defined by RSA 147-A:2, VI.
16. Env-Wm 502.01 requires that all generators of waste determine if their waste is a hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.
17. During the Inspection, DES personnel learned the following in regards to hazardous waste determinations:
 - a. Allstate uses sandblast grit to clean the edges of steel. DES personnel observed sand blast grit on the ground behind the building. Refer to photo #8 in DES File No. HWC 03-045 ("the File").
 - b. A one foot by two inch area of stained soil was observed at the east end of the Site.

- c. DES personnel observed three 55-gallon drums inside the building at the west end of the building. Two of the drums were sealed but not labeled. One drum was not labeled and had a funnel in one of the bungs. Allstate personnel were unable to identify the drums' contents. Refer to photo #3 in the File.
- d. DES personnel observed one unsealed drum in an alcove in the rear of the building. The drum was covered in red paint. The drum had a partial label of "red shop..." Allstate personnel were unable to identify the drums' contents. Refer to photo #1 in the File.

18. Env-Wm 504.01(c) states "Generators shall submit a notification form for each on-site location where hazardous waste activity is conducted."

19. As of the date of this Order, Allstate has not notified DES of its hazardous waste activities.

20. Env-Wm 511.01(b) states "... a generator shall deliver the hazardous waste to a facility authorized under the destination state's rules to handle the hazardous waste."

21. RSA 147-A:2, III defines "disposal" as "the discharge, deposit, incineration, injection, dumping, spilling, leaking or placing of any waste into or onto any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or be discharged into any waters, including groundwaters."

22. During the Inspection, Allstate informed DES personnel that the waste solvent generated from cleaning the spray guns is allowed to evaporate.

23. Allowing the waste solvent generated from cleaning the spray guns to evaporate constitutes disposal as defined by RSA 147-A:2, III.

24. Allstate primes metal pieces outside at the west end of the Site and allows the overspray to fall directly onto the ground. The soil and concrete are stained red from the primer. Refer to photos #4 and #5 in the File.

25. Allowing the overspray from priming metal pieces to fall to the ground constitutes disposal as defined by RSA 147-A:2, III.

26. Allstate has not delivered its hazardous waste to an authorized hazardous waste facility.

27. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.

28. During the Inspection, DES personnel observed ten 55-gallon drums and one 35-gallon drum stored on a flat bed trailer outside of the building. The drums have unknown contents and are unlabeled. The drums were covered with a tarp and DES personnel could not observe if the containers were sealed. Allstate personnel expressed a belief that these drums contained used oil. Refer to photo #2 in the File.

29. The drums identified in Paragraph C.28 were not labeled "Used Oil for Recycle".
30. Env-Wm 807.06(b)(11) requires used oil generators to deliver used oil to an authorized facility.
31. During the Inspection, Allstate informed DES personnel that used oil is transported by Allstate to Chase Garage, Pembroke Street, Pembroke, NH to be burned.
32. A review of DES files shows that Chase Garage has not notified DES as a used oil burner.
33. Env-Wm 807.06(b)(12) requires that used oil be transported using a three copy bill of lading.
34. Allstate informed DES that it does not use a bill of lading to transport the used oil to Chase Garage.
35. Env-Wm 801.02(c) defines "used oil marketer" as "any person who engages in the act of marketing [used oil]".
36. Env-Wm 807.08(a)(1)a. specifies that generators who market used oil directly to a burner shall be deemed to be a used oil marketer.
37. Allstate is a used oil marketer.
38. Env-Wm 807.09(b)(1) requires used oil marketers to notify DES of its used oil marketing activities.
39. A review of DES files shows that Allstate has not notified DES of its used oil marketing activities.
40. Env-Wm 110.01(c)(142) defines "universal waste" as "any of the following hazardous wastes that may be managed in accordance with Env-Wm 1100 in lieu of Env-Wm 300 through Env-Wm 700: batteries; pesticides; mercury-containing devices; lamps; cathode ray tubes; and antifreeze."
41. Env-Wm 110.01(c)(74) defines "lamp" as "the bulb or tube portion of an electrical lighting devise specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum and includes, but is not limited to fluorescent; high intensity discharge; neon; mercury vapor; high pressure sodium; and metal halide lamps."
42. During the Inspection, DES personnel learned that Allstate generates waste fluorescent light bulbs at the Site.
43. Fluorescent light bulbs are a universal waste as defined by Env-Wm 10.01(c)(142).
44. Env-Wm 110.01(c)(143)a. defines "universal waste handler" as "a generator of universal waste."

45. Allstate is a universal waste handler as defined by Env-Wm 10.01(c)(143).
46. Env-Wm 102.02(a)(a) states that "a universal waste handler shall not dispose of universal waste."
47. At the time of the Inspection, Allstate informed DES personnel that fluorescent light bulbs are disposed of in the dumpster.
48. Env-Wm 1102.03(b) requires universal waste handlers to manage universal waste in a way that prevents the release of the universal waste, or any component of the universal waste, to the environment.
49. Allstate did not manage its fluorescent light bulbs in a manner which would prevent the release of the universal waste to the environment.
50. During the Inspection, DES personnel observed metal filings on the ground at the Site, as well as several 5-gallon containers of metal filings outside at the Site. Refer to photo # 6 and #7 in the File.
51. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
52. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
53. The metal filings observed by DES personnel at the Site is solid waste as defined by RSA 149-M:4, XXII.
54. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."
55. A review of DES files shows Allstate has not applied for or holds a permit to operate a solid waste facility at any New Hampshire location.
56. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."
57. Solid waste has been disposed at the Site. This Site is not approved to accept solid waste.
58. As a result of the Inspection, DES issued a Report of Initial Complaint Investigation ("RICT") dated November 19, 2003, to Kenneth Jackson, an employee of Allstate, advising Allstate to complete the following:
 - a. Notify DES as a generator of hazardous waste;
 - b. Notify DES as a marketer of used oil;
 - c. Label and seal all containers of used oil;

- d. Containerize released material into appropriate, compatible containers, specifically the sand blast grit, the metal filings, the red oxide stained soil, and the stain soil observed at the east end of the Site;
- e. Submit copies of material safety datasheets for the paints, solvents and used oil to DES;
- f. Identify all unlabeled containers with unknown contents and manage accordingly; and
- g. Manage used oil in accordance with the Hazardous Waste Rules.

59. During the Inspection, DES personnel provided the following documents to Mr. Jackson:

- a. Hazardous Waste Notification Form;
- b. Hazardous Waste Identification Fact Sheet;
- c. Small Quantity Generator Self Certification Fact Sheet;
- d. Universal Waste Lamps Fact Sheet; and
- e. Env-Wm 807 Requirements for Management of Used Oil Being Recycled.

60. On November 21, 2003, DES personnel mailed a sample Used Oil Bill of Lading and a Hazardous Waste Transporter List to Allstate.

61. On December 11, 2003, DES personnel conducted a follow-up inspection of the Site. Mr. Jackson informed DES personnel that none of the actions required in the RICI have been completed.

62. On December 23, 2003, DES personnel conducted a second follow-up inspection of the Site. Allstate informed DES that the drums with unknown contents on the flat bed trailer had been sampled on December 22, 2003, by Clean Harbors Environmental Services, Inc. ("CHESI"). No other actions required in the RICI had been completed.

63. On January 7, 2004, DES personnel conducted a third follow-up inspection of the Site. Mr. Jackson informed DES personnel that Allstate had not yet received the analytical results from CHESI for the drums with unknown contents on the flat bed trailer. No other actions required by the RICI had been completed.

64. This is the second complaint DES has received about Allstate. On June 26, 2000, DES received a complaint alleging mismanagement of used oil and paint thinner at the Site.

65. On June 28, 2000, DES personnel investigated the June 26, 2000 complaint. There were no wastes present at the Site during the June 28, 2000 inspection.

66. During the June 28, 2000 inspection, DES personnel issued a RICI to Allstate, advising Allstate to complete the following:

- a. Manage used oil in accordance with the Hazardous Waste Rules;
- b. Containerize released material into appropriate, compatible containers and properly dispose of the containerized material;
- c. Identify the contents of all unmarked containers; and

- d. Manage any wastes in accordance with the Hazardous Waste Rules and the Solid Waste Rules.

67. On July 7, 2000, Allstate submitted a response to DES. The response identified the contents of all of the unmarked containers.

68. On July 12, 2000, DES personnel sent a sample Used Oil Bill of Lading and a copy of Env-Wm 807 Requirements for Management of Used Oil Being Recycled to Allstate. DES personnel also requested in the enclosed letter that Allstate "containerize the released material into appropriate, compatible containers and properly dispose."

69. During a follow-up inspection conducted on March 20, 2001, DES personnel observed that Allstate had completed the actions requested in the RIC1 issued during the June 28, 2000 inspection.

D. DETERMINATION OF VIOLATIONS

1. Allstate has violated Env-Wm 502.01 by failing to adequately determine if its waste is a hazardous waste.
2. Allstate has violated Env-Wm 504.01(c) by failing to notify DES of its hazardous waste activities.
3. Allstate has violated Env-Wm 51 .01(b) by failing to deliver hazardous waste to an authorized hazardous waste facility.
4. Allstate has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."
5. Allstate has violated Env-Wm 807.06(b)(11) by failing to deliver used oil to an authorized facility.
6. Allstate has violated Env-wm 807.06(b)(12) by failing to use a 3 part bill of lading when transporting used oil.
7. Allstate has violated Env-Wm 807.09(b)(1) by failing to notify DES as a marketer of used oil.
8. Allstate has violated Env-Wm 1102.02(a)(1) by failing to properly dispose of universal waste lamps.
9. Allstate has violated Env-Wm 1102.03(b) by failing to manage universal waste in a way that prevents the release of the universal waste, or any component of the universal waste, to the environment.
10. Allstate has violated RSA 149-M:9, II by failing to dispose of solid waste at an authorized solid waste facility.

E. ORDER

Based on the above findings, DES hereby orders Allstate as follows:

1. **Within 30 days** the date of this Order, perform a hazardous waste determination as specified in Env-Wm 502.01 on the items identified in Paragraphs C.17 and C.28. Submit the results along with any supporting data (i.e. material safety data sheets, chemical analyses, or process knowledge...etc) used to make the hazardous waste determinations to DES. A complete hazardous waste determination will require you to determine if the waste is a federal hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.
2. **By April 1, 2004**, containerize all stained soil and dispose of the stained soil at a facility permitted to accept it.
3. **Within 45 days of receiving hazardous waste determination results**, remove all hazardous waste/used oil at the Site to a facility or facilities permitted to accept such wastes in accordance with the Hazardous Waste Rules. If Allstate chooses to transport its used oil to an authorized facility, ensure that Allstate complies with the requirements of Env-Wm 807 Requirements for Management of Used Oil Being Recycled.
4. **Within 15 days** the date of this Order, notify DES as a generator of hazardous waste and as a marketer of used oil by completing and submitting a New Hampshire hazardous waste notification form to DES.
5. **Immediately** ensure that all containers of used oil destined for recycle are properly labeled with the words "Used Oil for Recycle" as specified by Env-Wm 807.06(b)(4).
6. **Immediately** cease disposing of fluorescent light bulbs as a solid waste.
7. **Immediately** manage all fluorescent light bulbs in accordance with Env-Wm 1112 Universal Waste Lamps.
8. **Within 30 days** the date of this Order, dispose of all metal filings at a permitted solid waste facility.
9. Submit a written status report to DES **within 45 days** the date of this Order, and a second report **within 75 days** the date of this Order, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and copies of disposal receipts.

10. Send correspondence, data, reports, and other submissions made in connection with this Order, **other than appeals**, to DES as follows:

Cheryl McGary, Waste Management Specialist
DES Waste Management Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-2456
e-mail: cmcgary@des.state.nh.us

F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Allstate of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M or RSA 147-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Allstate remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor Allstate's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.


Anthony P. Giunta, P.G., Director
Waste Management Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3595

cc: DB/FILE/ORDER
Gretchen Rule, DES Legal Unit
Anthony P. Giunta, P.G., Director, WMD
William & Joan Stewart Family Trust

Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town of Candia

Enclosures: Copy of photos
Notification Form
Env-Wm 807
Universal Waste Lamps Fact Sheet
Env-Wm 500

SQG Self-certification packet
Sample bill of lading
List of Hazardous Waste Transporters